

1 XAVIER BECERRA
Attorney General of California
2 PAUL STEIN
Supervising Deputy Attorney General
3 AARON JONES
Deputy Attorney General
4 State Bar No. 248246
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 510-3805
6 Fax: (415) 703-1234
E-mail: Aaron.Jones@doj.ca.gov
7 *Attorneys for Defendants*

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO
10
11

12 **FIRST AMENDMENT COALITION;
13 KQED INC.,**

14 Plaintiff,

15 v.

16 **XAVIER BECERRA, Attorney General of
17 the State of California; CALIFORNIA
18 DEPARTMENT OF JUSTICE,**

19 Defendants.
20
21
22
23
24
25
26
27
28

Case No. CPF19516545

**ANSWER OF DEFENDANTS XAVIER
BECERRA AND THE CALIFORNIA
DEPARTMENT OF JUSTICE TO THE
FIRST AMENDED PETITION FOR
WRIT OF MANDATE**

Trial Date: None Set

Action Filed: February 14, 2019

**(Exempt from Filing Fees:
Gov. Code, § 6103.)**

1 Pursuant to section 431.30 of the California Code of Civil Procedure, defendant Xavier
2 Becerra, Attorney General of the State of California, and the California Department of Justice
3 (“Department”) (jointly, “Defendants”) answer the First Amended Verified Petition for Writ of
4 Mandate to Enforce California Public Records Act in the above-captioned action (“Complaint”)
5 of plaintiffs First Amendment Coalition and KQED Inc. (jointly, “Plaintiffs”) as follows:

6 1. In response to paragraph 1 of the Complaint, Defendants admit that Senate Bill 1421
7 (Stats. 2018, ch. 988) (hereafter, “SB 1421”) took effect on January 1, 2019. Defendants also
8 admit that before 2019, California Penal Code section 832.7 provided that certain personnel
9 records of peace officers and other records were confidential, and that their disclosure was
10 restricted in certain respects. Defendants admit that SB 1421 amended Penal Code section 832.7.
11 SB 1421 and Penal Code section 832.7 speak for themselves. Except as specifically admitted,
12 Defendants deny each and every allegation contained in paragraph 1.

13 2. In response to paragraph 2 of the Complaint, Defendants admit that Plaintiffs have
14 requested certain records from the Department under the Public Records Act. Except as
15 specifically admitted, Defendants deny each and every allegation contained in paragraph 2.

16 3. In response to paragraph 3 of the Complaint, Defendants admit that SB 1421 is best
17 construed as encompassing personnel records that were created, or that relate to conduct that
18 occurred, before the law took effect on January 1, 2019. Defendants further aver that several
19 lawsuits are proceeding in California courts that raise the question of whether SB 1421 requires
20 disclosure of pre-2019 records, but that there has not yet been any final appellate decision on the
21 merits of that question. Defendants admit that, in light of the ongoing legal proceedings, and
22 because any public disclosure would irrevocably reveal potentially protected information, at this
23 time, the Department has not yet agreed to disclose records related to incidents occurring, or
24 records that were created, before January 1, 2019. Except as specifically admitted or averred,
25 Defendants deny each and every allegation contained in paragraph 3.

26 4. In response to paragraph 4 of the Complaint, Defendants admit that the California
27 Public Records Act, Government Code § 6250 et seq., speaks for itself. Except as specifically
28 admitted, Defendants deny each and every allegation contained in paragraph 4.

1 5. In response to paragraph 5 of the Complaint, Defendants admit that the Department
2 has not agreed to disclose records that it obtained from other state or local law enforcement
3 agencies, because Penal Code section 832.7 (as amended by SB 1421) and the Public Records Act
4 do not require or authorize the Department to disclose such records. Such records can be
5 requested directly from those agencies. Except as specifically admitted, Defendants deny each
6 and every allegation contained in paragraph 5.

7 6. In response to paragraph 6 of the Complaint, Defendants admit that SB 1421 and its
8 legislative history speak for themselves. Defendants deny that their actions contravene any
9 statute or are anathema to the purpose of any statute. Defendants lack information or knowledge
10 sufficient to answer the remaining allegations in paragraph 6 of the Complaint, and deny them on
11 that basis. Except as specifically admitted, Defendants deny each and every allegation contained
12 in paragraph 6.

13 7. In response to paragraph 7 of the Complaint, Defendants admit that Plaintiffs filed
14 this suit seeking release of certain records under the Public Records Act. Except as specifically
15 admitted, Defendants deny each and every allegation contained in paragraph 7.

16 8. In response to paragraph 8 of the Complaint, Defendants respond that they lack
17 information or knowledge sufficient to answer the allegations in paragraph 8 of the Complaint,
18 and on that basis, Defendants deny each and every allegation contained in paragraph 8.

19 9. In response to paragraph 9 of the Complaint, Defendants respond that they lack
20 information or knowledge sufficient to answer the allegations in paragraph 9 of the Complaint,
21 and on that basis, Defendants deny each and every allegation contained in paragraph 9.

22 10. In response to paragraph 10 of the Complaint, Defendants admit that Defendant the
23 California Department of Justice is a state agency that employs sworn peace officers and
24 maintains certain records relating to the peace officers that it employs. Except as specifically
25 admitted, Defendants deny each and every allegation contained in paragraph 10.

26 11. In response to paragraph 11 of the Complaint, Defendants admit that Defendant
27 Xavier Becerra is the Attorney General of the State of California and is the head of the California
28 Department of Justice. Defendants further admit that the provisions of the California Constitution

1 and Government Code referenced in paragraph 11 of the Complaint speak for themselves. Except
2 as specifically admitted, Defendants deny each and every allegation contained in paragraph 11.

3 12. In response to paragraph 12 of the Complaint, Defendants admit the allegations
4 contained in paragraph 12.

5 13. In response to paragraph 13 of the Complaint, Defendants admit that the Department
6 possesses certain records sought by Plaintiffs, likely totaling many thousands of such records if
7 not more. Defendants further admit that the Department created some but not all of those records.
8 Defendants admit that the California Commission on Peace Officer Standards and Training
9 erroneously disclosed certain confidential, non-public records regarding civilians as well as current
10 and former peace officers. Except as specifically admitted, Defendants deny each and every
11 allegation contained in paragraph 13.

12 14. In response to paragraph 14 of the Complaint, Defendants admit that the Department
13 contacted certain journalists who received confidential, non-public records to request that they
14 return those records as required by law. Except as specifically admitted, Defendants deny each
15 and every allegation contained in paragraph 14.

16 15. In response to paragraph 15 of the Complaint, Defendants admit that this Court has
17 jurisdiction over this action.

18 16. In response to paragraph 16 of the Complaint, Defendants admit that venue is proper
19 in this Court.

20 17. In response to paragraph 17 of the Complaint, Defendants admit that the sections of
21 the Public Records Act cited and quoted by paragraph 17 speak for themselves. Except as
22 specifically admitted, Defendants deny each and every allegation contained in paragraph 17.

23 18. In response to paragraph 18 of the Complaint, Defendants admit that the section of
24 the Public Records Act cited and quoted by paragraph 18 speaks for itself. Except as specifically
25 admitted, Defendants deny each and every allegation contained in paragraph 18.

26 19. In response to paragraph 19 of the Complaint, Defendants admit that the section of
27 the Public Records Act cited and quoted by paragraph 19 speaks for itself. Except as specifically
28 admitted, Defendants deny each and every allegation contained in paragraph 19.

1 20. In response to paragraph 20 of the Complaint, Defendants admit that the section of
2 the Public Records Act cited and quoted by paragraph 20 speaks for itself. Except as specifically
3 admitted, Defendants deny each and every allegation contained in paragraph 20.

4 21. In response to paragraph 21 of the Complaint, Defendants admit that the statutes and
5 case law cited by paragraph 21 speak for themselves. Except as specifically admitted, Defendants
6 deny each and every allegation contained in paragraph 21.

7 22. In response to paragraph 22 of the Complaint, Defendants admit that the Legislature
8 enacted SB 1421 in 2018, and that SB 1421 speaks for itself. Except as specifically admitted,
9 Defendants deny each and every allegation contained in paragraph 22.

10 23. In response to paragraph 23 of the Complaint, Defendants admit that SB 1421 became
11 effective on January 1, 2019, and that SB 1421 speaks for itself. Except as specifically admitted,
12 Defendants deny each and every allegation contained in paragraph 23.

13 24. In response to paragraph 24 of the Complaint, Defendants admit that SB 1421
14 amended Penal Code section 832.7, and that SB 1421 and Penal Code section 832.7 speak for
15 themselves. Except as specifically admitted, Defendants deny each and every allegation
16 contained in paragraph 24.

17 25. In response to paragraph 25 of the Complaint, Defendants admit that SB 1421 and
18 Penal Code section 832.7 speak for themselves. Except as specifically admitted, Defendants deny
19 each and every allegation contained in paragraph 25.

20 26. In response to paragraph 26 of the Complaint, Defendants admit that SB 1421 and
21 Penal Code section 832.7 speak for themselves. Except as specifically admitted, Defendants deny
22 each and every allegation contained in paragraph 26.

23 27. In response to paragraph 27 of the Complaint, Defendants admit that SB 1421 and
24 Penal Code section 832.7 speak for themselves. Except as specifically admitted, Defendants deny
25 each and every allegation contained in paragraph 27.

26 28. In response to paragraph 28 of the Complaint, Defendants respond that they lack
27 information or knowledge sufficient to answer the allegations in paragraph 28 of the Complaint,
28 and on that basis, Defendants deny each and every allegation contained in paragraph 28.

1 29. In response to paragraph 29 of the Complaint, Defendants admit that on January 4,
2 2019, Plaintiff First Amendment Coalition sent a letter to the Department seeking records under
3 the Public Records Act (hereafter, “First Amendment Coalition’s Request”), and that the
4 document attached to the Complaint as Exhibit A is a copy of that letter, which speaks for itself.
5 Except as specifically admitted, Defendants deny each and every allegation contained in
6 paragraph 29.

7 30. In response to paragraph 30 of the Complaint, Defendants admit that on February 4,
8 2019, KQED News submitted a request for records to the Department under the Public Records
9 Act jointly with other organizations (hereafter, “KQED’s Request”), and that the document
10 attached to the Complaint as Exhibit B is a copy of that request, which speaks for itself. Except
11 as specifically admitted, Defendants deny each and every allegation contained in paragraph 30.

12 31. In response to paragraph 31 of the Complaint, Defendants admit that KQED’s
13 Request sought certain records under the Public Records Act as stated therein. Except as
14 specifically admitted, Defendants deny each and every allegation contained in paragraph 31.

15 32. In response to paragraph 32 of the Complaint, Defendants admit that KQED’s
16 Request sought certain records under the Public Records Act as stated therein. Except as
17 specifically admitted, Defendants deny each and every allegation contained in paragraph 32.

18 33. In response to paragraph 33 of the Complaint, Defendants admit that KQED’s
19 Request speaks for itself. Except as specifically admitted, Defendants deny each and every
20 allegation contained in paragraph 33.

21 34. In response to paragraph 34 of the Complaint, Defendants admit that on January 14,
22 2019, the Department sent a letter extending its time to respond to the First Amendment
23 Coalition’s Request, and that the document attached to the Complaint as Exhibit C is a copy of
24 that letter, which speaks for itself. Except as specifically admitted, Defendants deny each and
25 every allegation contained in paragraph 34.

26 35. In response to paragraph 35 of the Complaint, Defendants admit that on February 1,
27 2019, the Department sent a letter responding to the First Amendment Coalition’s Request, and
28 that the document attached to the Complaint as Exhibit D is a copy of that letter, which speaks for

1 itself. Except as specifically admitted, Defendants deny each and every allegation contained in
2 paragraph 35.

3 36. In response to paragraph 36 of the Complaint, Defendants admit that the
4 Department's response to the First Amendment Coalition's Request speaks for itself. Except as
5 specifically admitted, Defendants deny each and every allegation contained in paragraph 36.

6 37. In response to paragraph 37 of the Complaint, Defendants deny each and every
7 allegation contained in paragraph 37.

8 38. In response to paragraph 38 of the Complaint, Defendants admit that the
9 Department's response to the First Amendment Coalition's Request speaks for itself. Except as
10 specifically admitted, Defendants deny each and every allegation contained in paragraph 38.

11 39. In response to paragraph 39 of the Complaint, Defendants deny each and every
12 allegation contained in paragraph 39.

13 40. In response to paragraph 40 of the Complaint, Defendants admit that the
14 Department's response to the First Amendment Coalition's Request speaks for itself. Except as
15 specifically admitted, Defendants deny each and every allegation contained in paragraph 40.

16 41. In response to paragraph 41 of the Complaint, Defendants admit that on February 22,
17 2019, the Department a letter to the California News Coalition via email responding to KQED's
18 Request, and that the document attached to the Complaint as Exhibit E is a copy of that letter,
19 which speaks for itself. Except as specifically admitted, Defendants deny each and every
20 allegation contained in paragraph 41.

21 42. In response to paragraph 42 of the Complaint, Defendants admit that the Attorney
22 General submitted an *amicus* brief in the case *Association for Los Angeles Deputy Sheriffs v.*
23 *Superior Court*, California Supreme Court, Case No. S243855, and that the document attached to
24 the Complaint as Exhibit F is a copy of that *amicus* brief, which speaks for itself. Except as
25 specifically admitted, Defendants deny each and every allegation contained in paragraph 42.

26 43. In response to paragraph 43 of the Complaint, Defendants admit that the Attorney
27 General's *amicus* brief in *Association for Los Angeles Deputy Sheriffs v. Superior Court* speaks
28

1 for itself. Except as specifically admitted, Defendants deny each and every allegation contained
2 in paragraph 43.

3 44. In response to paragraph 44 of the Complaint, Defendants admit that the Department
4 has not yet disclosed records in response to the First Amendment Coalition's Request or KQED's
5 Request. Except as specifically admitted, Defendants deny each and every allegation contained in
6 paragraph 44.

7 45. In response to paragraph 45 of the Complaint, Defendants deny each and every
8 allegation contained in paragraph 45.

9 46. In response to paragraph 46 of the Complaint, Defendants incorporate by reference
10 the above responses as if fully set forth herein.

11 47. In response to paragraph 47 of the Complaint, Defendants deny each and every
12 allegation contained in paragraph 47.

13 48. In response to paragraph 48 of the Complaint, Defendants deny each and every
14 allegation contained in paragraph 48.

15 **AFFIRMATIVE DEFENSES**

16 In addition, as separate and affirmative defenses, Defendants allege as follows:

17 **FIRST DEFENSE**

18 The Complaint and each cause of action alleged therein fail to state facts sufficient to
19 constitute a cause of action against Defendants.

20 **SECOND DEFENSE**

21 The Complaint and each cause of action therein fail because Defendants have fulfilled their
22 duties as required by law.

23 **THIRD DEFENSE**

24 The Complaint and each cause of action therein fail to the extent they seek records that are
25 exempt from disclosure under Government Code sections 6254, subdivision (k), including records
26 that constitute or reflect attorney-client communications or attorney work product, or that are
27 confidential or protected under any other privilege, immunity, or doctrine.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FOURTH DEFENSE

The Complaint and each cause of action therein fail to the extent they seek records that are exempt from disclosure under Government Code section 6255.

FIFTH DEFENSE

The Complaint and each cause of action therein fail to the extent they seek records, disclosure of which is not required by Penal Code section 832.7 and SB 1421.

SIXTH DEFENSE

Defendants assert a reservation of rights to amend should any further defenses become apparent in the course of this action.

WHEREFORE, Defendants pray that:

1. Judgment be rendered in favor of Defendants and against Plaintiffs;
2. Plaintiffs take nothing by the Complaint;
3. Defendants be awarded such other and further relief as the Court may deem necessary and proper.

Dated: April 4, 2019

Respectfully Submitted,

XAVIER BECERRA
Attorney General of California
PAUL STEIN
Supervising Deputy Attorney General



AARON JONES
Deputy Attorney General
Attorneys for Defendants

SA2019100630
42140326.docx

DECLARATION OF ELECTRONIC SERVICE and OVERNIGHT COURIER

Case Name: *First Amendment Coalition v. Xavier Becerra, et al*
Case No.: **CPF19516545**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004. I am familiar with the business practice at the Office of the Attorney General for collection and processing of electronic correspondence and correspondence for overnight mail with the **Golden State Overnight (GSO)**. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the overnight courier that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the File & ServeXpress electronic filing system.

On April 4, 2019, I electronically served the attached **ANSWER OF DEFENDANTS XAVIER BECERRA AND THE CALIFORNIA DEPARTMENT OF JUSTICE TO THE FIRST AMENDED PETITION FOR WRIT OF MANDATE** by transmitting a true copy via this Court's File & ServeXpress system. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, for overnight delivery, addressed as follows:

David E. Snyder
First Amendment Coalition
Glen A. Smith
534 4th Street, Suite B
San Rafael, CA 94901-3334
E-mail:
dsnyder@firstamendmentcoalition.org
gsmith@firstamendmentcoalition.org

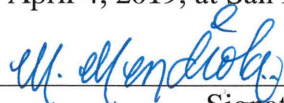
Brendan Charney
Davis Wright Tremaine LLP
865 Figueroa Street, Suite 2400
Los Angeles, CA 90017
E-mail: brendancharney@dwt.com

Michael T. Risher
Law Office of Michael T. Risher
2081 Center St. #154
Berkeley, CA 94702
E-Mail: michael@risherlaw.com

Thomas R. Burke
Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111
E-mail: thomasburke@dwt.com

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 4, 2019, at San Francisco, California.

M. Mendiola
Declarant


Signature